

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

MARCELO GARCIA,	:	
Movant,	:	CRIMINAL ACTION NO.
	:	1:05-CR-122-RWS
v.	:	
	:	CIVIL ACTION NO.
UNITED STATES OF AMERICA,	:	1:18-CV-3454-RWS
Respondent.	:	

**ORDER**

Presently before the Court is the Magistrate Judge's Report and Recommendation (R&R) recommending that the pending motion brought pursuant to 28 U.S.C. § 2255 be denied. [Doc. 419]. Movant has filed his objections in response to the R&R. [Doc. 421].

A district judge has broad discretion to accept, reject, or modify a magistrate judge's proposed findings and recommendations. United States v. Raddatz, 447 U.S. 667, 680 (1980). Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews any portion of the Report and Recommendation that is the subject of a proper objection on a *de novo* basis and any non-objected portion under a "clearly erroneous" standard.


In the R&R, the Magistrate Judge recommends that Movant's § 2255 motion be denied as untimely pursuant to 28 U.S.C. § 2255(f). In his objections, Movant repeatedly asserts that his trial counsel was ineffective for failing to properly advise him about his appeal rights. While that contention may state a valid claim for relief,

Movant has failed to demonstrate any reasonable basis for waiting over a decade to assert the claim so as to entitle him to equitable tolling or other relief from the operation of the one-year statute of limitation.

Accordingly, the R&R, [Doc. 419], is hereby **ADOPTED** as the order of this Court, and the § 2255 motion, [Doc. 418], is **DENIED**.

This Court further agrees with the Magistrate Judge that Movant has failed to raise any claim of arguable merit, and a Certificate of Appealability is **DENIED** pursuant to 28 U.S.C. § 2253(c)(2). Civil action number 1:18-CV-3454-RWS is **DISMISSED**.

IT IS SO ORDERED, this 2nd day of October, 2018.

  
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RICHARD W. STORY  
UNITED STATES DISTRICT JUDGE